

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Concerned Pastors for
Social Action, et al.,

Plaintiffs,

v.

Case No. 16-10277

Nick A. Khouri, et al.,

Defendants.

/

MOTIONS TO ENFORCE SETTLEMENT AGREEMENT

BEFORE THE HONORABLE DAVID M. LAWSON

United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
February 15, 2023

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1 Detroit, Michigan

2 February 15, 2023

3 1:57 p.m.

4 * * *

5 THE CLERK: All rise. The United States District
6 Court for the Eastern District of Michigan is now in session,
7 the Honorable David M. Lawson presiding.

8 THE COURT: You may be seated.

9 THE CLERK: Now calling the case of Concerned
10 Pastors v. Khouri, Case Number 16-10277.

11 THE COURT: Good afternoon, counsel. May I have an
12 appearance for the plaintiffs, please?

13 MS. ROLNICK: Yes. Adeline Rolnick, your Honor.

14 THE COURT: Again.

15 MS. ROLNICK: Adeline Rolnick.

16 THE COURT: For all of the plaintiffs?

17 MS. ROLNICK: For all plaintiffs, yes.

18 THE COURT: Anybody else?

19 MS. TALLMAN: Sarah Tallman for all plaintiffs.

20 MS. CALERO: Melanie Calero for all plaintiffs.

21 THE COURT: I didn't hear you.

22 MS. CALERO: Melanie Calero for all plaintiffs.

23 THE COURT: All right. And for the City?

24 MR. KUPTZ: Joseph Kuptz for the City of Flint.

25 MR. KIM: William Kim for the City of Flint,

1 your Honor.

2 THE COURT: All right. And Mr. Kuhl, are you just
3 kind of observing today?

4 MR. KUHL: That's it, your Honor.

5 THE COURT: And put your appearance on the record,
6 please.

7 MR. KUHL: Richard Kuhl for the State defendant.

8 THE COURT: All right. Thank you.

9 The matter is before the Court on a motion to enforce
10 the settlement agreement.

11 I have a stipulation that was filed on January 19
12 that is quite elaborate and detailed, and apparently the only
13 thing left in dispute over the -- that arises out of the
14 motion has to do with how to address the situation of prior
15 line replacements where the restoration wasn't completed at
16 the houses and to notify those -- how those homeowners would
17 be notified and how they could seek some relief to get that
18 job finished.

19 Ms. Rolnick, is that accurate?

20 MS. ROLNICK: Yes, that's the remaining disputed --
21 yes, that's the remaining disputed issue.

22 THE COURT: All right. And have you had a chance --
23 it seems to me that this boils down to pretty much whether or
24 not it's reasonable to require the City to put door hangers on
25 the residences so that those individuals can be notified. Is

1 that sort of where we are at this -- with this?

2 MS. ROLNICK: Yes. The notice provision, to be
3 specific, the plaintiffs have proposed is that as part of
4 the visual inspections the City has agreed to, if the City
5 visits a home where it doesn't have a record of restoration,
6 determines that the City will not need to do future restoration
7 at the home, the City would then leave a door hanger notifying
8 the resident so that the resident knows they should not expect
9 the City to return.

10 THE COURT: Okay. So these are only homeowners
11 who -- whom the City determines to be residing in residences
12 where the work is all finished?

13 MS. ROLNICK: Yes, that's correct.

14 THE COURT: And if the homeowner disagrees, then they
15 can contact somebody at the City and take it up with them; is
16 that --

17 MS. ROLNICK: Certainly. Or the resident could also
18 decide to perform repairs to their property on their own. But
19 the important thing is that they would know the City's
20 decision.

21 THE COURT: All right. Mr. -- is it Kuptz?

22 MR. KUPTZ: Kuptz, your Honor.

23 THE COURT: Kuptz. I'm sorry.

24 So what's the problem?

25 MR. KUPTZ: Your Honor, because of restoration and

1 recordkeeping decisions made by the City of Flint between
2 2017 and 2019, the City of Flint doesn't have a full handle
3 on the extent of restorations that still need to be completed
4 during those years. So the concern, your Honor, is --

5 THE COURT: So whose decision was it not to keep
6 track?

7 Actually, counsel, I'll tell you what, let's use the
8 lectern here, because I think that way it would make everybody
9 more hearable.

10 You can straighten that out, if you like. We just
11 had a hearing where people were interrogating witnesses.

12 MR. KUPTZ: Thanks, Judge.

13 So as I indicated, between 2017 and 2019 there were
14 certain decisions made under the prior administration of this
15 program where the records are not complete as to the extent of
16 the restoration.

17 THE COURT: Right. And my question was, who made
18 that decision?

19 MR. KUPTZ: It's my understanding it was someone in
20 that prior administration or a combination of decisions that
21 were made over those years.

22 THE COURT: Was it somebody in one of the political
23 branches or an elective office that made that decision?

24 MR. KUPTZ: I'm not sure the exact root origination
25 of those decisions, your Honor.

1 THE COURT: So that is as much a mystery as which
2 restorations are incomplete; right?

3 MR. KUPTZ: Correct, your Honor.

4 THE COURT: So do you dispute the idea that if a yard
5 was dug up and hasn't been restored that the homeowner has a
6 right to have that work completed?

7 MR. KUPTZ: Well, the City of Flint is absolutely
8 committed to completing restorations for prior service line
9 excavations and replacements. The only concern is, because
10 we don't know the scope of the issue, we don't know the cost.
11 And at this point, your Honor, the total of the amount spent
12 or already under contract are all of the monies that have been
13 allocated to this -- to date to this project.

14 THE COURT: Well, do you agree that the work has to
15 be done?

16 MR. KUPTZ: We would agree that restorations, if
17 there was a prior excavation or replacement, need to be
18 done and the City is absolutely committed to doing that.

19 THE COURT: Okay. And that means the City is
20 committed to funding that work?

21 MR. KUPTZ: And that's not an answer that I have,
22 your Honor, because all I know is -- at this point is that
23 the monies that have been committed already have already been
24 spent or allocated to contracts.

25 THE COURT: Well, I heard you the first time when you

1 said that. But you said the City is absolutely committed to
2 doing the work, but then I asked if you're willing to pay for
3 it, and you kind of waffled on me. So how do we approach that?

4 MR. KUPTZ: I think the biggest concern, your Honor,
5 is finding the source of funds and when those funds will be
6 available.

7 THE COURT: Okay. Before you can do that, you have
8 to find out the extent of the work that's necessary; right?

9 MR. KUPTZ: Correct.

10 THE COURT: All right. How many houses or how many
11 parcels are possibly -- or are involved in -- well, let me try
12 to state this more artfully.

13 Do you have a record of how many parcels are involved
14 in actual line replacements where the work is fully completed
15 and restoration is finished?

16 MR. KUPTZ: Where restoration is finished, no. We
17 are in the process of compiling that list.

18 THE COURT: Okay. So that's one of the problems;
19 right?

20 MR. KUPTZ: Correct, your Honor.

21 THE COURT: All right. How are you going about
22 determining that? Are you going door to door?

23 MR. KUPTZ: Well, there's a number of ways that's
24 being accomplished. The project manager, ROWE Engineering,
25 has an individual who is responsible for -- in the City's

1 tracking database, number one, there are properties where
2 excavation and or replacement have occurred and there is a
3 contemporaneous record of restoration.

4 THE COURT: Okay. So you can eliminate those
5 parcels; right?

6 MR. KUPTZ: Correct, your Honor.

7 THE COURT: All right. Do you have a numerical count
8 for me today on that?

9 MR. KUPTZ: I don't, at this point.

10 THE COURT: Okay.

11 MR. KUPTZ: That's still being compiled.

12 THE COURT: All right. And then apparently there is
13 a universe of the parcels where rest- -- where replacement has
14 been achieved but restoration was not completed; is that fair
15 to say?

16 MR. KUPTZ: That's true. And there's also parcels
17 where restoration may have been completed previously but there
18 is no contemporaneous record of that restoration in the City's
19 tracking database.

20 THE COURT: All right. Set that one aside for a
21 minute.

22 The one that I just mentioned, where replacement has
23 occurred but restoration is.

24 A. Not completed, that's really the main focus of our
25 discussion here; is that fair to say?

1 MR. KUPTZ: I believe so.

2 THE COURT: All right. Although, I imagine the
3 plaintiff would say that where the City believes restoration
4 was completed but the homeowner doesn't, there ought to be a
5 mechanism for dealing with that, I would think. But let's set
6 that aside for a minute.

7 So are you going -- do you have a database of all the
8 replacements?

9 MR. KUPTZ: Yes, your Honor.

10 THE COURT: All right. And then from that you could
11 exclude the database where you know that restoration was
12 completed?

13 MR. KUPTZ: Correct, your Honor.

14 THE COURT: And so then you have a universe of
15 parcels where possibly restoration would be needed; correct?

16 MR. KUPTZ: Correct.

17 THE COURT: And how do you eliminate from that set of
18 parcels ones -- houses that you don't think need restoration?

19 Are you going door to door and inspecting? Is that
20 how it's done?

21 MR. KUPTZ: Well, as part of this fifth motion to
22 enforce, as part of what the City of Flint has already
23 stipulated to is a set of visual inspection criteria that the
24 project manager is currently using to assess those parcels to
25 determine whether restoration is, in fact, complete at that

1 parcel.

2 THE COURT: And there is an agreement on that; right?

3 MR. KUPTZ: That's correct. It's part of the fifth
4 motion to enforce that has already been stipulated to by the
5 City.

6 THE COURT: All right. And so what's left then?

7 MR. KUPTZ: What's left that the City is objecting
8 to is the requirement that a door hanger be placed on those
9 addresses stating that the City of Flint believes restoration
10 activity is complete at that address.

11 As proposed by plaintiffs in their proposed order,
12 that door hanger would require a telephone number and an email
13 address for the resident to contact the City of Flint if they
14 believed that restoration is not complete at their house.

15 THE COURT: All right. Just to clarify, you're not
16 talking about an email address and telephone number of the
17 resident, you're talking about a -- some contact information
18 for someone in the City; right?

19 MR. KUPTZ: That's correct, your Honor, so they could
20 contact the City.

21 THE COURT: All right. And why are you resisting
22 that?

23 MR. KUPTZ: For a number of reasons, your Honor.

24 Number one, the City, when they receive a call or
25 an email from a resident, the City is obligated to respond

1 to that resident's concern. The order as proposed by
2 plaintiffs does not require the City to follow up with the
3 resident, only to maintain a database or a listing of those
4 contacts.

5 But the City as a government is responsive to its
6 citizens and would feel compelled to respond, and that
7 requires time and resources that the City does not have at
8 this point.

9 THE COURT: Well, that's not a legal requirement,
10 that's a policy requirement, a policy determination; right?

11 MR. KUPTZ: And I think you're right, your Honor.
12 It gets back to the funding issue. The City has --

13 THE COURT: I'm not talking about funding. You
14 said that the City is compelled to respond to residents
15 that reach out to them, but I'm trying to determine what you
16 believe is the source of the compulsion. Is it law or is it
17 policy?

18 MR. KUPTZ: I think that would be a policy argument
19 which requires resources from the City.

20 THE COURT: Okay. All right. I'll tell you what,
21 let me hear from Ms. Rolnick, then, and I will let you follow
22 up with that.

23 MS. ROLNICK: Good afternoon, your Honor.

24 To respond to a few points that the City made, \$11
25 million, which is what the City has by its own accounting

1 remaining under this agreement, is enough to complete this
2 remaining work, including the restoration backlog.

3 THE COURT: Do you have any conception of how many
4 houses would be involved in that possible universe or subset
5 of parcels that had replacement lines installed but
6 restoration is not completed?

7 MS. ROLNICK: The number the City has shared with
8 plaintiffs is 6,000 as the universe of sort of unknowns.

9 THE COURT: Oh, okay. So -- but maybe some of those
10 have satisfied homeowners living there; right?

11 MS. ROLNICK: Yes. It's an unknown. But that's
12 plaintiffs' understanding of the scope here. And the notice
13 would only be required at a subset of those homes that --
14 where the City deems restoration have been completed.

15 THE COURT: Oh, if restoration hasn't been completed,
16 then they are going to restore?

17 MS. ROLNICK: Exactly.

18 THE COURT: All right.

19 MS. ROLNICK: Notice would not be required under
20 plaintiffs' proposal.

21 In addition, the City has already allocated contract
22 money to identify the scope of restoration work in its
23 contract with its project manager, ROWE, and that's at
24 plaintiffs' appendix page 104.

25 And the City, as you noted, has already agreed to

1 these visual inspections, and the cost of the notice provision
2 specifically is quite small. The cost of printing the door
3 hangers, plaintiffs made some basic inquiries in preparation
4 for this hearing. The City could print 10,000 door hangers
5 for \$1,000.

6 THE COURT: Well, they are already printing door
7 hangers under the stipulation, right, for other reasons?

8 MS. ROLNICK: That's true. In paragraph 3 the City
9 has agreed to another door hanger requirement, and the City
10 has agreed to many other door hanger requirements under this
11 agreement, which makes their objection here all the more
12 baffling, frankly.

13 THE COURT: Well, not exactly. But I'm not sure that
14 they are pushing back on the cost of printing door hangers. I
15 think they are concerned about the consequences of that.

16 If there is -- if there are door hangers with contact
17 information inviting complaints, then, they -- as I understand
18 counsel, the present administration feels obliged to respond
19 to those complaints and to actually allocate funding for
20 someone to make those return calls and possibly to go out and
21 take a look.

22 MS. ROLNICK: Yes. Plaintiffs understand that to be
23 one of the City's concerns. If the City's inspections are
24 accurate and are correctly identifying where restoration work
25 does and does not remain, there is no reason to think that

1 the City is going to be deluged with calls from its residents
2 as a result of these visual inspections.

3 And if the City's inspections are inaccurate and are
4 not identifying where restoration work does remain correctly,
5 that's information the City should be receiving from its
6 residents and it's information that the City's witness
7 conceded would benefit the City's visual inspection process.

8 THE COURT: Is there another way of distributing the
9 contact information to residents --

10 MS. ROLNICK: Contact --

11 THE COURT: -- other than door hangers? Like publish
12 it in some sort of general circulation newspaper or putting it
13 on the City's website or something like that?

14 MS. ROLNICK: The City's contact information is
15 publicly available. Not all residents have the technological
16 access to look that up on the internet.

17 But what's meaningful about the notice is not only
18 that it lists the City's contact information, but that it
19 informs the resident that the City has made a decision about
20 their property.

21 Residents have essentially been in limbo for years,
22 not knowing whether the City is coming back or when the
23 City might be coming back to fix damage to their lawns and
24 sidewalks. They might be confused whether it's their
25 responsibility or the City's responsibility. And if the City

1 is not going to be finishing this overdue work at residents'
2 homes, the least the City can do is provide notice about its
3 decision.

4 THE COURT: All right. What would be the legal
5 basis for me to order that under the settlement agreement?

6 MS. ROLNICK: This is appropriate as enforcement
7 of the settlement. Plaintiffs brought their fifth motion
8 to enforce to effectuate compliance with some of the core
9 requirements of the agreement, both the requirement to find
10 and replace service lines and to restore properties.

11 The notice is part of this remedial scheme to remedy
12 the City's failure to both timely complete restoration by the
13 deadline it agreed to and to keep track of where it completed
14 that work.

15 THE COURT: Are you suggesting that if the City had
16 kept track you could go out and check it out yourself?

17 MS. ROLNICK: If the City had kept track and was able
18 to provide contemporaneous documentation of everywhere it had
19 completed restoration, we wouldn't be here. The only reason
20 that plaintiffs are seeking this relief is because the City
21 does not know where restoration does or does not remain and
22 residents also don't know whether they can expect the City to
23 come back and fix their properties or when the City might be
24 coming back.

25 THE COURT: What sort of contact have you had from

1 residents about this as a problem?

2 MS. ROLNICK: The scope of the problem is unclear,
3 but it certainly exists. Plaintiffs --

4 THE COURT: And as a result -- and you believe that
5 because of what?

6 MS. ROLNICK: Because of both media reports on this
7 and because of residents that plaintiffs have spoken to,
8 including the two declarants whose affidavits we submitted
9 with our reply brief.

10 THE COURT: Are there more than two?

11 MS. ROLNICK: I don't know, your Honor.

12 THE COURT: Have you been contacted by more than two?

13 MS. ROLNICK: We have heard from others. I don't
14 have an exact number.

15 THE COURT: Can you approximate?

16 MS. ROLNICK: Probably under a dozen, but, you know,
17 plaintiffs --

18 THE COURT: It hasn't been 6,000, has it?

19 MS. ROLNICK: It hasn't been 6,000. You know, I
20 would speculate that many residents have been patiently
21 waiting for the City to come back and finish their work.

22 And, you know, the City has now committed to
23 finishing that work, but if the City is not going to be doing
24 more work for a particular resident, they should let the
25 resident know.

1 THE COURT: All right. Thank you. Anything else?

2 MS. ROLNICK: I would like to just briefly touch upon
3 the stipulation the parties filed and why we're asking the
4 Court to approve that, if I may.

5 THE COURT: Oh, if you think it's necessary. I have
6 been through it and I don't have a particular issue with
7 anything.

8 MS. ROLNICK: Okay. Then we will rest on our papers.
9 Thank you.

10 THE COURT: Is there something else that you want to
11 bring to my attention out of the stipulation?

12 MS. ROLNICK: Just the importance of the court order
13 approving those remedies. Despite filing the stipulation,
14 counsel for the City has not yet been able to confirm to
15 plaintiffs whether the City has begun complying with these
16 remedies, so without a court order, plaintiffs have no way
17 of ensuring the City follows through on its commitments.

18 THE COURT: Oh, no, I understand that. Have you
19 asked them?

20 MS. ROLNICK: Yes.

21 THE COURT: And they haven't been able to tell you?

22 MS. ROLNICK: My understanding is that they have a
23 request out to their contractor for information, and we're
24 awaiting confirmation on exactly to what extent they have
25 begun complying and when.

1 THE COURT: Thank you.

2 MS. ROLNICK: Thank you.

3 THE COURT: Mr. Kuptz, do you want to address the
4 Court further?

5 MR. KUPTZ: Your Honor, just a few follow-up notes.

6 As to the labor costs associated with this
7 requirement that's been proposed by plaintiffs, it's the
8 City's understanding that those labor costs are outside of the
9 scope of the current contracts as they were entered into.

10 THE COURT: Labor costs for what?

11 MR. KUPTZ: For placing the door hangers, responding
12 to citizen calls, verifying restoration status, those types
13 of things.

14 THE COURT: Well, placing the door hangers would
15 be the function of a -- would be the process by which an
16 individual who's already going out to inspect the property
17 would simply have one and hang it on a door; right?

18 MR. KUPTZ: Correct. As far as placing the door
19 hanger, there would be a minimal amount of time associated
20 with that. It would be more on the other end of things, the
21 taking the calls, logging the emails.

22 THE COURT: All right.

23 MR. KUPTZ: Those activities.

24 THE COURT: Sure.

25 MR. KUPTZ: And I would just note that all additional

1 activities related to this proposed requirement would just
2 draw from that total pool of funds that is available for
3 excavations and replacements.

4 THE COURT: Doesn't the City have some mechanism in
5 place already for responding to citizen complaints?

6 MR. KUPTZ: They do, your Honor. Citizens do, on
7 occasion, contact the City with a concern regarding either
8 their service line or their restoration of excavation work,
9 and those concerns are responded to.

10 THE COURT: And what's the -- how is that staffed?

11 MR. KUPTZ: It's essentially staffed -- the call
12 either comes into the Department of Public Works and it's
13 answered by one of their employees or by the front desk at
14 City Hall, and then that concern is routed to the Department
15 of Public Works. Again, we're just concerned about the
16 potential scope of the number of emails, the number of phone
17 calls that are coming in.

18 THE COURT: How many DPW complaints do you get a day?

19 MR. KUPTZ: I don't have that exact number. From
20 speaking with the Director of the Department of Public Works,
21 there are several that come in, at least, a day, not
22 necessarily related to excavation or replacement or
23 restoration but any type of Department of Public Works issue.

24 THE COURT: Well, that was my question. I wasn't
25 trying to limit it just to issues in this case. But there

1 is a mechanism in place already to address that; right?

2 MR. KUPTZ: There is. Again, your Honor, it's just
3 the expansion in the scope and how many potential phone calls
4 or emails might come in.

5 THE COURT: I guess I'm not following you as to how
6 you would measure additional costs to basically pursue a
7 policy that you tell me is already in place to respond to
8 citizens' complaints.

9 MR. KUPTZ: Well, for example, your Honor, Mr. Brown,
10 he is the Director of the City of Flint's Department of Public
11 Works. His deposition was taken in advance of this motion
12 hearing today, and he testified, in part, at the deposition
13 that there is a number of key roles within the Department of
14 Public Works that are currently vacant, and so staffing is
15 an issue. The cost of filling those positions is an issue.
16 And, again, we don't know the extent, how many personnel would
17 be required to respond to any of these concerns that are
18 brought.

19 THE COURT: Right. But isn't that kind of a general
20 department issue that is not isolated to the lead line
21 replacements?

22 MR. KUPTZ: It is not, your Honor. But Mr. Brown
23 indicated in the affidavit that we attached to our response
24 brief that based on his experience working on other
25 large-scale Public Works projects, he anticipates if this

1 were to be a requirement that were imposed on the City that
2 it would cause an undue burden because it would increase the
3 number of calls and emails that are received from residents.

4 THE COURT: Right. Didn't his deposition pretty
5 much undermine all of the conclusions that he made in that
6 affidavit?

7 MR. KUPTZ: I would disagree, Judge.

8 THE COURT: It seemed that he was not able to support
9 much of his conclusory language with facts and figures; am I
10 not fairly reading that?

11 MR. KUPTZ: Well, I -- my position would be that he
12 testified at his deposition essentially what I have been
13 arguing this afternoon, is that the scope of the problem
14 isn't fully known.

15 THE COURT: Okay. Do you have any other argument you
16 would like to present?

17 MR. KUPTZ: Your Honor, I would just indicate that
18 the City of Flint has begun implementing major provisions
19 of the fifth motion to enforce settlement agreement. In
20 fact, we have a conference set with plaintiffs and their
21 representatives at our office tomorrow to work through that
22 and to continue working through this.

23 THE COURT: Is the contractor on board with the
24 provisions of the stipulation?

25 MR. KUPTZ: Yes, your Honor. The contractor and the

1 project manager are both aware of the requirements in that
2 stipulation.

3 THE COURT: All right. Anything else, Mr. Kuptz?

4 MR. KUPTZ: I don't believe so, Judge.

5 THE COURT: All right. Mr. Kuhl, anything?

6 MR. KUHL: No, your Honor.

7 THE COURT: Thank you.

8 MR. KUHL: Nothing to say.

9 THE COURT: Anything else?

10 MS. ROLNICK: Nothing further.

11 THE COURT: All right. I'll take the motion under
12 advisement. I will incorporate the stipulation, the terms
13 of the stipulation, in an order with respect to this last
14 disputed item.

15 Thank you for your presentations today, and good luck
16 with your project.

17 MR. KUPTZ: Thank you, Judge.

18 THE COURT: You may recess court.

19 THE CLERK: All rise. Court is now in recess.

20 (Proceedings adjourned at 2:23 p.m.)

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CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s/ Rene L. Twedt
RENE L. TWEDT, CSR-2907, RDR, CRR, CRC
Federal Official Court Reporter

February 28, 2023
Date